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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/691,471	10/21/2003	Vivien Ann Munoz-Ferrada	FBRIC44.001AUS	5957
20995	7590	03/21/2006	[REDACTED]	EXAMINER
KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614			KAO, CHIH CHENG G	
			[REDACTED]	ART UNIT
				PAPER NUMBER
				2882

DATE MAILED: 03/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/691,471	MUNOZ-FERRADA ET AL. <i>(initials)</i>
	Examiner Chih-Cheng Glen Kao	Art Unit 2882

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 21 February 2006.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-3, 12, 14-22, 27, 28, 30-35 and 37-48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 9-11, 20-22, 31-35, 37-40, 45, 47 and 48 is/are rejected.
- 7) Claim(s) 1, 3-8, 12, 14-19, 27, 28, 30, 41-44 and 46 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 22 March 2004 is/are: a) accepted or b) objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date: _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date: _____	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

DETAILED ACTION

Allowable Subject Matter

1. The indicated allowability of claims 34, 35, 37-39, 45, and 47 is withdrawn in view of newly discovered reference(s). Rejections based on the newly cited reference(s) follow.

Claim Objections

2. Claims 1, 3-12, 14-22, 27, 28, 30-35, and 37-48 are objected to because of the following informalities, which appear to be minor draft errors including grammatical and/or lack of antecedent basis problems.

In the following format (location of objection; suggestion for correction), the following correction(s) may obviate the objection(s): (claim 1, line 1, the operational performance"; deleting "the"), (claim 1, line 5, "the optical density"; deleting "the"), (claim 1, line 5, "of selected of the known features"; inserting - -features- - after "selected"), (claim 3, lines 1-2, "the image scanner"; inserting - -further comprising using an image scanner for the step of scanning,- before "wherein" in line 1 of claim 3), (claim 5, line 2, "the scanned image"; replacing "scanned" with - -electronic- -), (claim 6, line 2, "to ensure the locations"; inserting - -that- - after "ensure"), (claim 6, lines 2-3, "the scanned image"; replacing "scanned" with - -electronic- -), (claim 9, line 3, "Dmax and the Average Gradient"; inserting a comma after "Dmax" and deleting "the"), (claim 10, line 2, "the data"; deleting "the"), (claim 10, line 2, "data, and"; deleting the comma), (claim 10, line 2, "the layout"; replacing "the" with - -a- -), (claim 10, line 2, "layout, of"; deleting the comma), (claim 11, lines 1-2, "the basis"; replacing "the" with - -a- -

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), (claim 12, line 1, "the operational performance"; deleting "the"), (claim 12, line 6, "the optical density"; deleting "the"), (claim 12, lines 6-7, "of selected of the known features"; inserting - - features- - after "selected"), (claim 16, line 2, "the scanned image"; replacing "scanned" with - - electronic- -), (claim 17, line 2, "to ensure the locations"; inserting - -that- - after "ensure"), (claim 17, lines 2-3, "the scanned image"; replacing "scanned" with - -electronic- -), (claim 20, line 3, "Dmax and the Average Gradient"; inserting a comma after "Dmax" and deleting "the"), (claim 21, line 2, "the data"; deleting "the"), (claim 21, line 2, "data, and"; deleting the comma), (claim 21, line 2, "the layout"; replacing "the" with - -a- -), (claim 21, line 2, "layout, of"; deleting the comma), (claim 22, line 1, "the basis"; replacing "the" with - -a- -), (claim 27, line 1, "the optical density"; deleting "the"), (claim 30, line 1, "programmed compute"; replacing "compute" with - -computer- -), (claim 31, line 3, "Dmax and the Average Gradient"; inserting a comma after "Dmax" and deleting "the"), (claim 32, line 2, "the data"; deleting "the"), (claim 32, line 2, "data, and"; deleting the comma), (claim 32, line 2, "the layout"; replacing "the" with - -a- -), (claim 32, line 2, "layout, of"; deleting the comma), (claim 33, line 2, "the basis"; replacing "the" with - -a- -), (claim 34, line 2, "the optical density"; deleting "the"), (claim 34, lines 4-5, "film process"; replacing "process" with - -processor- -), (claim 37, line 3, "Dmax and the Average Gradient"; inserting a comma after "Dmax" and deleting "the"), (claim 38, line 2, "the data"; deleting "the"), (claim 38, line 2, "data, and"; deleting the comma), (claim 38, line 2, "the layout"; replacing "the" with - -a- -), (claim 38, line 2, "layout, of"; deleting the comma), (claim 39, line 1, "the basis"; replacing "the" with - -a- -), (claim 40, line 3, "the optical density"; deleting "the"), (claim 40, line 4, "selected of the known features"; inserting - -features- - after "selected"), (claim 43, line 2, "twenty one"; inserting a hyphen between "twenty" and "one"),

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(claim 44, line 2, "twenty one"; inserting a hyphen between "twenty" and "one"), (claim 45, line 5, "twenty one"; inserting a hyphen between "twenty" and "one"), (claim 46, line 2, "twenty one"; inserting a hyphen between "twenty" and "one"), (claim 47, line 2, "twenty one"; inserting a hyphen between "twenty" and "one"), and (claim 48, line 2, "twenty one"; inserting a hyphen between "twenty" and "one").

Claims 3-11, 14-22, 28, 30-33, 35, 37-39, 41-44, and 46-48 are objected to by virtue of their dependency. For purposes of examination, the claims have been treated as such. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 9-11, 20-22, 31-33, and 37-39 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 9, 20, 31, and 37, the phrase "also known as", as recited twice in lines 2-3 of each respective claim, renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Claims 10, 11, 21, 22, 32, 33, 38, and 39 are rejected by virtue of their dependency.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 40 and 48 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 40 and 48 claim a computer data signal embodied in a carrier wave. However, a signal embodied in a carrier wave is natural phenomena. Claims that recite nothing but the physical characteristics of a form of energy are nonstatutory natural phenomena. No preemption is permitted. Therefore, claims 40 and 48 are rejected for being directed to non-statutory subject matter.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 34, 35, 37-39, and 47 are rejected under 35 U.S.C. 102(b) as being anticipated by Robar et al. (US 2001/0033682).

Robar et al. discloses a computer readable medium (fig. 2, #22).

Note that a recitation with respect to the manner in which a claimed apparatus is intended to be employed fails to differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 45 is rejected under 35 U.S.C. 103(a) as being unpatentable over Robar et al. in view of Pawlicki et al. (US 5796862).

Robar et al. discloses a flat bed scanner (fig. 2, #20) calibrated to scan a processed X-ray film (fig. 2, #12).

However, Robar et al. fails to disclose 16 bit greyscale capability.

Pawlicki et al. teaches 16 bit greyscale capability (col. 4, lines 35-47).

It would have been obvious, to one having ordinary skill in the art at the time the invention was made, to incorporate the scanner of Robar et al. with the 16 bit greyscale capability of Pawlicki et al., since one would be motivated to make such a modification to provide greater detail in an image (col. 4, lines 44-47) compared to a lower greyscale capability as implied from Pawlicki et al.

Note that the object under inspection (i.e., the X-ray film bearing a test image having known image features at known locations, to create an electronic version of the image in which the location of the test image are predictable, wherein the test image comprises a sensitometric strip having twenty-one exposure steps) has not been given patentable weight because it fails to further differentiate the apparatus that is being claimed (i.e., the flat bed scanner) from prior art satisfying the claimed structural limitations.

Allowable Subject Matter

7. Claims 1, 3-12, 14-22, 27, 28, 30-33, 41-44, and 46 would be allowable if rewritten or amended to overcome the claim objections(s) and claim rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action. The following is a statement of reasons for the indication of allowable subject matter.

8. Regarding claim 1, prior art fails to disclose or fairly suggest a test method including measuring optical density of selected features of the known features of the electronic image, to calculate predetermined performance indicators, and to deliver a report of operational performance of the X-ray film processor, in combination with all the limitations of the claim. Claims 3-11 and 41-43 contain allowable subject matter by virtue of their dependency.

9. Regarding claim 12, prior art fails to disclose or fairly suggest a test system including a programmed computer to measure optical density of selected features of the known features of the electronic image, to calculate predetermined performance indicators, and to deliver a report of operational performance of the X-ray film processor, in combination with all the limitations of the claim. Claims 14-22 and 44 contain allowable subject matter by virtue of their dependency.

10. Regarding claim 27, prior art fails to disclose or fairly suggest a programmed computer to measure optical density of selected known features of an electronic image of a test image having known image features at known locations, to calculate predetermined performance indicators,

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and to deliver a report of operational performance of an X-ray film processor, in combination with all the limitations in the claim. Claims 38, 30-33, and 46 contain allowable subject matter by virtue of their dependency.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chih-Cheng Glen Kao whose telephone number is (571) 272-2492. The examiner can normally be reached on M - F (9 am to 5 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ed Glick can be reached on (571) 272-2490. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


gk


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